IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1032 OF 1988

The State of Maharashtra
through the Collector of Sangli ...Appellant
(Original Opponent)

V/s.

Smt.Basavva Dundappa Dugani ...Respondent
(Original Claimant)

Mr.Bharat Mehta, AGP for the Appellant.
Mr.R.S. Apte for the Respondent.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 16, 2007

P.C. :-

. Heard Shri Mehta, learned AGP for the State and Shri Apte, learned Counsel for the respondent.

2. Shri Apte, learned Counsel for the respondent submits that he has returned the papers to the client after the matter was dismissed for default in 2002. The learned Counsel for the appellant submits that the trial Court had erred in enhancing the compensation and that there is no evidence on record justifying enhancing of compensation.

3. The learned AGP submits that the claimant is not entitled to claim at the rate of 12% as additional compensation under Section 23(1-A) since the award was passed before the amendment of 1982.

4. So far as the first submission is concerned, I have perused the evidence which is adduced by the claimant. The claimant has stated that the lands were acquired for the minor irrigation tank and that price of this land was Rs.7000/- per acre. He has further stated that there were 3-4 bunds constructed on this land and that separate compensation was not paid by the Land Acquisition Officer for these bunds. He has also stated that a well was constructed on the said land in the year 1968 and the Land Acquisition Officer has not determined the price of the well separately. He has further stated that he was taking money crops such as sugar-cane etc. He has further stated that after the land was acquired, the remaining was divided into two portions and the well was submerged in the acquired land and therefore, no water was available for the remaining portion of the land. It is further stated that on account of

acquisition of the other land, the remaining portion was divided into four fragments and therefore, the said portion had become useless. If the said evidence is taken into consideration, it is obvious that on account of acquisition of adjoining land, the remaining land had become practically worthless and therefore, under the provisions of Section 23, claimant was entitled to claim damages on account of the said portion that was useless on account of acquisition of the said land. The Trial Court has, therefore awarded enhanced compensation of Rs.39,670/- which comes to about Rs.3000/- per acre. The submission made by the learned AGP for the State cannot be accepted. Though it is true that the trial Court has not given adequate reasons for arriving at the enhanced compensation, perusal of the evidence on record indicates that there is sufficient material on record on the basis of which the claimant would be entitled to claim enhanced compensation as awarded by the trial Court.

5. So far as the second submission made by the learned AGP for the State regarding the grant of

additional compensation under the provisions of Section 23(1-A) is concerned, this submission will have to be accepted. It is an admitted position that the award was passed prior to 1982 and as such, the claimant would not entitled to claim the benefit of the amendment made in 1982 and therefore, will not be entitled to claim interest under the provisions of Section 23(1-A). The additional compensation, therefore, which is calculated at the rate of 12% will have to be deducted from the payable compensation awarded by the Reference Court. Rest of the award, however, is confirmed.

7. The appeal is partly allowed in the above terms and is disposed of.

(V.M. KANADE, J.)